IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 22ND AUGUST 2006 / 31ST SRAVANA 1928

CRL.A.No. 814 of 2001

CC.4/1998 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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APPELLANT:

M/S R.J. MARKETING, 40/5491,
K.V. VITTAPPA, PRABHU ROAD, ERNAKULAM,
REPRESENTED BY ITS POWER OF ATTORNEY HOLDER-
VASANT .P. ZAVERI.

BY ADV. SRI.S.K.BRAHMANANDAN
SRI.G.SREENIVASA PRABHU
SRI.S.B.PREMACHANDRA PRABHU

RESPONDENT:

GREGARIAN BAHU, PROPRIETOR,
THE TITLE, S-59A,, G.C.D.A. COMPLEX,
MARINE DRIVE, ERNAKULAM.

BY ADV. SRI.K.S.AJAYAGHOSH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

CRL.A. 814/2001

DATED THIS THE 22ND DAY OF AUGUST, 2006

JUDGMENT

The complainant, in C.C.No.4/1998 on the file of the Chief Judicial Magistrate Court, Ernakulam, is the appellant. He preferred a complaint, under Section 138 of the Negotiable Instruments Act, in short 'the Act', before the Court below, against the respondent, accused. The learned Magistrate framed five points for the consideration of which Point No.2, was whether Ext.P1 cheque had bounced, for the reason that the cheque amount exceeded the arrangement with the bank, in the cash credit account of the accused.

2. Discussing the evidence on record, particularly relying on PW1, the bank Manager, the learned Magistrate came to the conclusion that 'the accused in fact had sufficient fund in his cash credit account, to honour Ext.P1 cheque'. The Court

therefore, came to the conclusion that the dishonour was not due to the fault of the accused. Therefore, the point No.2 was found in favour of the accused. Although all the other point Nos. 1, 3 and 4 were found in favour of the complainant, in view of the findings, under point No.2, the learned Magistrate dismissed the complaint and acquitted the accused.

3. Under Section 138 of the Act, two situations are envisaged for the dishonour of the cheque namely:-

> (i). that the amount of money standing to the credit of that account is insufficient to honour the cheque or,
>
> (ii). that it exceeds the amount, arranged to be paid from that account, by an agreement made with that Bank.

4. PW1 is the bank Manager. There was a cash credit facility for Rs.3,00,000/-. The accused, respondent drew an amount of Rs. 2,73,210.90, from the said cash credit, thereafter. In such situation, when Ext.P1 cheque for Rs.11,496/- was sent for

clearance, the petitioner did not clear it, as the amount, in Ext.P1 cheque, exceeded the amount, arranged to be paid from the account of the accused and agreed by the accused as well as PW1, the bank manager.

5. When the dishonour of the cheque was intimated, the accused did not reply, nor did he pay the amount, covered in Ext.P1. He did not enter the box and adduce evidence to show that PW1 was wrong legally and factually and the accused had sufficient fund in his cash credit account.

6. In such circumstances, I hold that the dishonour of the cheque was due to the reason, that Ext.P1 cheque amount exceeded the amount, arranged to be paid from that account, by the agreement, which was made by the accused with the bank of PW1, the bank Manager and also due to his failure to make payment of the Ext.P1 cheque amount as per proviso (c) to Section 138 of the Act. The learned Magistrate discussed, relying under Section 140 of the Act, that

at the time of the issuance of Ext.P1 cheque, he had no reason to believe that Ext.P1 would be dishonoured because of the arrangement he had with the bank. I had already answered this point in the earlier discussions, that the accused did not enter the box and rebutte the evidence adduced by PW1. In such circumstances, Section 140 of the Act, will not come to the rescue of the accused.

7. In the above facts situation, I hold that the complainant, appellant, had proved the offence under Section 138 of the Act. Hence, I convict the accused thereunder.

8. Before sentencing the accused, it is necessary that the accused should be heard. For the limited purpose of hearing the accused, respondent, and imposing sentence as per the law, I set aside the impugned judgment and remand C.C.No.4/1998, which is hereby restored to the file of the Chief Judicial Magistrate Court, Ernakulam, to that Court.

9. The parties shall appear before the Chief

Judicial Magistrate Court, Ernakulam, on 26.9.2006. The learned Magistrate shall hear the accused and impose sentence, as per the law.

10. If the complainant is prepared to compound the matter with the accused, respondent, under Section 147 of the Act, the learned Magistrate shall allow the same as well.

The appeal is disposed of accordingly.

J.M.JAMES
JUDGE

mrcs